Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte REN JUDKINS

Appeal No. 2000-1732
Application No. 08/972,852[1]

HEARD: FEBRUARY 7, 2001

Before COHEN, ABRAMS, and STAAB, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 7 and 9 through 26. Claim 8 stands objected to as

[1] This application is a continuation of 08/661,192, now U.S. Patent No. 5,692,552, which is a continuation of 08/384,136, now U.S. Patent No. 5,573,051. U.S. Patent No. 5,692,552 on its face indicates that its term can not extend beyond the expiration date of U.S. Patent No. 5,573,051. In the present application, a terminal disclaimer (Paper No. 6) has been recorded, as acknowledged by the examiner (Paper No. 7), such that the term of any patent maturing from the present application shall not extend beyond the expiration date of U.S. Patent No. 5,692,552.

being dependent upon a rejected base claim, but would otherwise be allowable according to the examiner if rewritten in independent form including all of the limitations of the base claim and intervening claims. As indicated in an advisory action (Paper No. 11), subsequent to the final rejection the examiner entered an amendment (Paper No. 10) canceling claims 23 through 26. Thus, claims 1 through 7 and 9 through 22 are before us for review.

Appellant's invention pertains to a venetian type blind. A basic understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the APPENDIX to the main brief (Paper No. 11).

As evidence of anticipation and obviousness, the examiner has applied the documents listed below:

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| Walker | 2,200,349 | May 14, 1940 |
| Abraham | 3,460,601 | Aug. 12, 1969 |
| Simon | 5,060,709 | Oct. 29, 1991 |

The following rejections are before us for review.[2]

Claims 1, 5 through 7, 10 through 15, 17, 18, and 20 through 22 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Simon.

Claims 2 through 4 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Simon.

Claim 19 stands rejected under 35 U.S.C. § 103 as being unpatentable over Simon in view of Abraham.

Claims 1, 7, 13, 14, 16 through 18, and 20 through 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Walker.

Claim 19 stands rejected under 35 U.S.C. § 103 as being unpatentable over Walker in view of Abraham.

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[2] A final rejection of claims 22 through 26 under 35 U.S.C. § 112, first paragraph, was obviously rendered moot and withdrawn by the examiner since claims 22 through 26 were canceled after the final rejection.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 13 ), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 11 and 14).

## OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,[3] and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

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[3] In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

We do not sustain any of the examiner's rejections on appeal. Our reasoning appears below.

At the outset, it is worthy of pointing out that we appreciate from appellant's specification (pages 6 and 7) that slots 7 in venetian blind slats 6 are sized so that lift cords 81, 82, 83, and 84 and ends of cord type rungs 13 of a cord type ladder 10 can fit loosely therein. The slots are of a depth such that only the lift cords and ends of the rungs can completely fit therein such that cord type rails of the ladder can never be fully within the slots. As explained by appellant (specification, page 9), "[s]ince the rails are on the outside edges of the slats they can fold neatly across the front of the blind when the blind is raised to the position shown in Figure 2." This folding is also depicted in Figure 6.

Appellant's sole independent claim 1 sets forth a venetian type blind comprising, inter alia, a plurality of slats with each slat having at least a first slot on one of an outside edge and an inside edge, with the first slots forming

a first vertically arrayed set of slots, and with each slat having a second slot on one of the outside edge and the inside edge, with the second slots forming a second vertically arrayed set of slots, first and second ladders having respective opposite cord type rails and rungs, a first pair of lift cords with one of the lift cords running through the first set of slots, a second pair of lift cords with one of the lift cords running through the second set of slots, the rungs of each respective ladder each being aligned above one another, the first pair of lift cords being engaged with a plurality of rungs of the first ladder and the second pair of lift cords being engaged with a plurality of the rungs of the second ladder such that the rails of the ladders fold substantially in a plane parallel to the edges of the slats when the lift cords draw the slats together.

We now address the Simon reference as applied in the first ground of rejection.

A reading of the patent to Simon reveals to us that it is not anticipatory of the venetian type blind of claim 1 under

35 U.S.C. § 102(b).[4] At this point, we note that it is well settled that an anticipation cannot be predicated on an ambiguous reference. See In re Turlay, 304 F.2d 893, 899, 134 USPQ 355, 360 (CCPA 1962). With the above in mind, we recognize that the Simon patent includes conflicting statements, i.e., column 1, lines 64, 65 set forth that vertical portions of the ladder cord ride in slat notches while column 3, lines 39 through 41 recite that the notches engage vertical lift cords. Nevertheless, it does appear to us, considering the document as a whole (in particular, the recitations in column 1, lines 65 through 67, column 3, lines 13 through 21, column 3, lines 44 through 46, and Figs. 1 through 4) that those versed in this art would fairly understand that the vertical ladder cords 15, 21 reside in the

[4] Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

notches 36, 38 since lateral movement between the ladder cords and the slats is clearly intended by the patentee to be prevented. With this perspective, it is likewise our understanding that rear lift cords are threaded through loops 31 attached to rear ladder cords, while front lift cords (as seen in Fig. 1) are woven with front ladder cords at approximately every tenth to fifteenth slat at points between the slats.[5]

Based upon our assessment of the Simon teaching, it is clear to us that the lift cords thereof do not run through respective first and second sets of slots, as now claimed. Further, we do not discern that one versed in the art would comprehend from the Simon teaching that the lift cords thereof would engage a plurality of the ladder rungs such that the rails of the ladders would fold substantially in a plane parallel to the edges of the slats when the lift cords draw the slats together, as now claimed. In our view, it is

[5] The Simon specification in obvious error sets forth that a front lift cord is woven about a corresponding front lift cord (column 3, lines 19 and 20).

speculative as to how the ladder rails of Simon would fold. For the reasons given, the rejection under 35 U.S.C. § 102(b) is not sound and cannot be sustained.

The respective rejections under 35 U.S.C. § 103 based upon Simon alone and Simon in view of Abraham likewise cannot be sustained.

Simply stated, the rationales and evidence applied in these rejections does not overcome the deficiencies of the Simon teaching articulated above.

This panel of the board turns now to a consideration of the Walker patent as applied in the examiner's rejection of claim 1.

We find that, unlike the claimed venetian type blind that includes first and second ladders having opposite cord type rails and rungs, rungs of each respective ladder being aligned above one another, and first and second pairs of lift cords engaging a plurality of the rungs of the first and second ladders, respectively, such that the rails of the ladders fold substantially in a plane parallel to the edges of the slats

when the lift cords draw the slats together, the venetian blind of Walker relies upon ladder tapes with ladder rungs that are staggered and attached to opposed sides of the tapes to allow a lifting cord to pass therebetween (page 1, column 2, lines 10 through 18). The examiner, in the rejection under 35 U.S.C.

§ 103 based upon the Walker patent alone, expresses the point of view that since the ladder tapes of Walker are considered to be "the full and obvious mechanical equivalent of cord type rails and rungs" the claim limitation of cord type rails and rungs does not constitute a patentable distinction (answer, page 5). However, we particularly point out at this time that equivalency, in and of itself, is not dispositive of an obviousness determination under 35 U.S.C. § 103. See In re Flint, 330 F.2d 363, 367-68, 141 USPQ 299, 302 (CCPA 1964). In this case, the examiner has not specified details of the construction of the indicated equivalent cord type rails and rungs. Appellant makes reference to and distinguishes the Simon teaching of lift and ladder cords (main brief, page 10). As we see it, the evidence applied by the examiner simply would not have been, by itself, suggestive of the particular

arrangement of lift cords and cord type rails and rungs, as now claimed, wherein the rails of ladders fold substantially in a plane parallel to the edges of slats when the lift cords draw the slats together. As a final point, we simply do not see a sound basis in the applied evidence supporting the examiner's assertion that the particularly claimed folding would be inherent. The additional reference to Abraham does not overcome that which is lacking in the Walker disclosure. For the above reasons, all of the rejections based upon the Walker patent cannot be sustained.

In summary, this panel of the board has reversed each of the rejections on appeal.

The decision of the examiner is reversed.

REVERSED

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| IRWIN CHARLES COHEN | ) | |
| Administrative Patent Judge | ) | |
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| | ) | BOARD OF PATENT |
| NEAL E. ABRAMS | ) | APPEALS AND |
| Administrative Patent Judge | ) | INTERFERENCES |
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| LAWRENCE J. STAAB | ) | |
| Administrative Patent Judge | ) | |

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ICC:lmb

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APPLICATION NO. 08/972,852

APJ COHEN

APJ STAAB

APJ ABRAMS

DECISION: **REVERSED**

Prepared By:

**DRAFT TYPED:** 30 Aug 01

**FINAL TYPED:**